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17 **UNITED STATES DISTRICT COURT**

18 **EASTERN DISTRICT OF CALIFORNIA**

19 CARLOS CORTEZ,

20 Plaintiff,

21 v.

22 FCA US, LLC, A Delaware Limited  
23 Liability Company; and DOES 1  
through 10, inclusive,

24 Defendants.  
25

26 Case No. 1:20-cv-00597-SAB  
27

28 *Judge: Hon. Stanley A. Boone*

**STIPULATION AND  
PROTECTIVE ORDER**

Action Filed: March 19, 2020  
Trial Date: June 15, 2021

1           **IT IS HEREBY STIPULATED** by and between Plaintiff Carlos Cortez  
2 (“Plaintiff”) and Defendant FCA US LLC (“Defendant”) (collectively, the “Parties”),  
3 by and through their respective counsel of record, that in order to facilitate the  
4 exchange of information and documents which may be subject to confidentiality  
5 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties  
6 stipulate as follows:

7           1.     **A. PURPOSES AND LIMITATIONS**

8           As the parties have represented that discovery in this action is likely to involve  
9 production of confidential, proprietary, or private information for which special  
10 protection from public disclosure and from use for any purpose other than prosecuting  
11 this litigation may be warranted, this Court enters the following Protective Order.  
12 This Order does not confer blanket protections on all disclosures or responses to  
13 discovery. The protection it affords from public disclosure and use extends only to  
14 the limited information or items that are entitled to confidential treatment under the  
15 applicable legal principles. Further, as set forth in Section 12.3, below, this Protective  
16 Order does not entitle the parties to file confidential information under seal. Rather,  
17 when the parties seek permission from the court to file material under seal, the parties  
18 must comply with Civil Local Rules 140 and 141 and with any pertinent orders of the  
19 assigned District Judge and Magistrate Judge.

20           **B. GOOD CAUSE STATEMENT**

21           In light of the nature of the claims and allegations in this case and the parties’  
22 representations that discovery in this case will involve the production of confidential  
23 records, and in order to expedite the flow of information, to facilitate the prompt  
24 resolution of disputes over confidentiality of discovery materials, to adequately  
25 protect information the parties are entitled to keep confidential, to ensure that the  
26 parties are permitted reasonable necessary uses of such material in connection with  
27 this action, to address their handling of such material at the end of the litigation, and  
28 to serve the ends of justice, a protective order for such information is justified in this

1 matter. The parties shall not designate any information/documents as confidential  
2 without a good faith belief that such information/documents have been maintained  
3 in a confidential, non-public manner, and that there is good cause or a compelling  
4 reason why it should not be part of the public record of this case.

5 **2. DEFINITIONS**

6       2.1 Action: The instant action: *Carlos Cortez v. FCA US LLC*, Case No.  
7 1:20-CV-00597-SAB.

8       2.2 Challenging Party: a Party or Non-Party that challenges the  
9 designation of information or items under this Order.

10      2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
11 how it is generated, stored or maintained) or tangible things that qualify for protection  
12 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
13 Cause Statement.

14      2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
15 support staff).

16      2.5 Designating Party: a Party or Non-Party that designates information or  
17 items that it produces in disclosures or in responses to discovery as  
18 “CONFIDENTIAL.”

19      2.6 Disclosure or Discovery Material: all items or information, regardless  
20 of the medium or manner in which it is generated, stored, or maintained (including,  
21 among other things, testimony, transcripts, and tangible things), that are produced or  
22 generated in disclosures or responses to discovery in this matter.

23      2.7 Expert: a person with specialized knowledge or experience in a matter  
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
25 an expert witness or as a consultant in this Action.

26      2.8 House Counsel: attorneys who are employees of a party to this Action.  
27 House Counsel does not include Outside Counsel of Record or any other outside  
28 counsel.

1           2.9 Non-Party: any natural person, partnership, corporation, association, or  
2 other legal entity not named as a Party to this action.

3           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
4 to this Action but are retained to represent or advise a party to this Action and have  
5 appeared in this Action on behalf of that party or are affiliated with a law firm which  
6 has appeared on behalf of that party, and includes support staff.

7           2.11 Party: any party to this Action, including all of its officers, directors,  
8 employees, consultants, retained experts, and Outside Counsel of Record (and their  
9 support staffs).

10          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this Action.

12          2.13 Professional Vendors: persons or entities that provide litigation support  
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
15 and their employees and subcontractors.

16          2.14 Protected Material: any Disclosure or Discovery Material that is  
17 designated as “CONFIDENTIAL.”

18          2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
19 from a Producing Party.

20          3. SCOPE

21          The protections conferred by this Order cover not only Protected Material (as  
22 defined above), but also (1) any information copied or extracted from Protected  
23 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
24 and (3) any deposition testimony, conversations, or presentations by Parties or their  
25 Counsel that might reveal Protected Material, other than during a court hearing or at  
26 trial.

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1 Any use of Protected Material during a court hearing or at trial shall be  
2 governed by the orders of the presiding judge. This Order does not govern the use of  
3 Protected Material during a court hearing or at trial.

4 **DURATION**

5 Even after final disposition of this litigation, the confidentiality obligations  
6 imposed by this Order shall remain in effect until a Designating Party agrees  
7 otherwise in writing or a court order otherwise directs. Final disposition shall be  
8 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
9 or without prejudice; and (2) final judgment herein after the completion and  
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
11 including the time limits for filing any motions or applications for extension of time  
12 pursuant to applicable law.

13 **DESIGNATING PROTECTED MATERIAL**

14 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**  
15 Each Party or Non-Party that designates information or items for protection under this  
16 Order must take care to limit any such designation to specific material that qualifies  
17 under the appropriate standards. The Designating Party must designate for protection  
18 only those parts of material, documents, items, or oral or written communications that  
19 qualify so that other portions of the material, documents, items, or communications  
20 for which protection is not warranted are not swept unjustifiably within the ambit of  
21 this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations  
23 that are shown to be clearly unjustified or that have been made for an improper  
24 purpose (e.g., to unnecessarily encumber the case development process or to impose  
25 unnecessary expenses and burdens on other parties) may expose the Designating Party  
26 to sanctions.

27 If it comes to a Designating Party's attention that information or items that it  
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2       5.2 Manner and Timing of Designations. Except as otherwise provided in  
3 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise  
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
5 under this Order must be clearly so designated before the material is disclosed or  
6 produced.

7              Designation in conformity with this Order requires:

8                  (a) for information in documentary form (e.g., paper or electronic  
9 documents, but excluding transcripts of depositions), that the Producing Party affix at  
10 a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL  
11 legend”), to each page that contains protected material. If only a portion or portions  
12 of the material on a page qualifies for protection, the Producing Party also must clearly  
13 identify the protected portion(s) (e.g., by making appropriate markings in the  
14 margins).

15              A Party or Non-Party that makes original documents available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated  
17 which documents it would like copied and produced. During the inspection and before  
18 the designation, all of the material made available for inspection shall be deemed  
19 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
20 copied and produced, the Producing Party must determine which documents, or  
21 portions thereof, qualify for protection under this Order. Then, before producing the  
22 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”  
23 to each page that contains Protected Material. If only a portion or portions of the  
24 material on a page qualifies for protection, the Producing Party also must clearly  
25 identify the protected portion(s) (e.g., by making appropriate markings in the  
26 margins).

27                  (b) for testimony given in depositions that the Designating Party identifies  
28 on the record, before the close of the deposition as protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

**5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

**6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

**6.2 Meet and Confer.** The Challenging Party shall meet and confer as required by the pertinent orders of the assigned Magistrate Judge.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

**7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this

1 Action only for prosecuting, defending, or attempting to settle this Action. Such  
2 Protected Material may be disclosed only to the categories of persons and under the  
3 conditions described in this Order. When the Action has been terminated, a Receiving  
4 Party must comply with the provisions of Section 13 below.

5 Protected Material must be stored and maintained by a Receiving Party at a  
6 location and in a secure manner that ensures that access is limited to the persons  
7 authorized under this Order.

8       7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
9 otherwise ordered by the court or permitted in writing by the Designating Party, a  
10 Receiving Party may disclose any information or item designated  
11 “CONFIDENTIAL” only to:

12           (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
13 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
14 to disclose the information for this Action;

15           (b) the officers, directors, and employees (including House Counsel) of the  
16 Receiving Party to whom disclosure is reasonably necessary for this Action;

17           (c) Experts (as defined in this Order) of the Receiving Party to whom  
18 disclosure is reasonably necessary for this Action and who have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20           (d) the court and its personnel;

21           (e) court reporters and their staff;

22           (f) professional jury or trial consultants, mock jurors, and Professional  
23 Vendors to whom disclosure is reasonably necessary for this Action and who have  
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25           (g) the author or recipient of a document containing the information or a  
26 custodian or other person who otherwise possessed or knew the information;

27           (h) during their depositions, witnesses, and attorneys for witnesses, in the  
28 Action to whom disclosure is reasonably necessary provided: (1) the deposing party

1 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”  
2 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any  
3 confidential information unless they sign the “Acknowledgment and Agreement to  
4 Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party  
5 or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
6 depositions that reveal Protected Material may be separately bound by the court  
7 reporter and may not be disclosed to anyone except as permitted under this Protective  
8 Order; and

9                     (i) any mediator or settlement officer, and their supporting personnel,  
10 mutually agreed upon by any of the parties engaged in settlement discussions.

11                 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
12 **OTHER LITIGATION**

13                 If a Party is served with a subpoena or a court order issued in other litigation  
14 that compels disclosure of any information or items designated in this Action as  
15 “CONFIDENTIAL,” that Party must:

16                     (a) promptly notify in writing the Designating Party. Such notification shall  
17 include a copy of the subpoena or court order unless prohibited by law;

18                     (b) promptly notify in writing the party who caused the subpoena or order  
19 to issue in the other litigation that some or all of the material covered by the subpoena  
20 or order is subject to this Protective Order. Such notification shall include a copy of  
21 this Protective Order; and

22                     (c) cooperate with respect to all reasonable procedures sought to be pursued  
23 by the Designating Party whose Protected Material may be affected.

24                 If the Designating Party timely seeks a protective order, the Party served with  
25 the subpoena or court order shall not produce any information designated in this action  
26 as “CONFIDENTIAL” before a determination by the court from which the subpoena  
27 or order issued, unless the Party has obtained the Designating Party’s permission, or  
28 unless otherwise required by the law or court order. The Designating Party shall bear

1 the burden and expense of seeking protection in that court of its confidential material  
2 and nothing in these provisions should be construed as authorizing or encouraging a  
3 Receiving Party in this Action to disobey a lawful directive from another court.

4 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
5 PRODUCED IN THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a  
7 Non-Party in this Action and designated as "CONFIDENTIAL." Such information  
8 produced by Non-Parties in connection with this litigation is protected by the  
9 remedies and relief provided by this Order. Nothing in these provisions should be  
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to  
12 produce a Non-Party's confidential information in its possession, and the Party is  
13 subject to an agreement with the Non-Party not to produce the Non-Party's  
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party  
16 that some or all of the information requested is subject to a confidentiality agreement  
17 with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Protective Order  
19 in this Action, the relevant discovery request(s), and a reasonably specific description  
20 of the information requested; and

21 (3) make the information requested available for inspection by the Non-  
22 Party, if requested.

23 (c) If a Non-Party represented by counsel fails to commence the process  
24 called for by Local Rules and pertinent orders of the Magistrate Judge within 14 days  
25 of receiving the notice and accompanying information or fails contemporaneously to  
26 notify the Receiving Party that it has done so, the Receiving Party may produce the  
27 Non-Party's confidential information responsive to the discovery request. If an  
28 unrepresented Non-Party fails to seek a protective order from this court within 14

1 days of receiving the notice and accompanying information, the Receiving Party may  
2 produce the Non-Party's confidential information responsive to the discovery request.  
3 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
4 any information in its possession or control that is subject to the confidentiality  
5 agreement with the Non-Party before a determination by the court unless otherwise  
6 required by the law or court order. Absent a court order to the contrary, the Non-  
7 Party shall bear the burden and expense of seeking protection in this court of its  
8 Protected Material.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
11 Protected Material to any person or in any circumstance not authorized under this  
12 Protective Order, the Receiving Party must immediately (a) notify in writing the  
13 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
14 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
15 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
16 request such person or persons to execute the "Acknowledgment and Agreement to  
17 Be Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain  
21 inadvertently produced material is subject to a claim of privilege or other protection,  
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
24 may be established in an e-discovery order that provides for production without prior  
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
26 parties reach an agreement on the effect of disclosure of a communication or  
27 information covered by the attorney-client privilege or work product protection, the  
28 parties may incorporate their agreement into this Protective Order.

1       12. **MISCELLANEOUS**

2           12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
3           person to seek its modification by the Court in the future.

4           12.2 Right to Assert Other Objections. No Party waives any right it otherwise  
5           would have to object to disclosing or producing any information or item on any  
6           ground not addressed in this Protective Order. Similarly, no Party waives any right  
7           to object on any ground to use in evidence of any of the material covered by this  
8           Protective Order.

9           12.3 Filing Protected Material. A Party that seeks to file under seal any  
10          Protected Material must comply with Civil Local Rules 140 and 141 and with any  
11          pertinent orders of the assigned District Judge and Magistrate Judge. If a Party's  
12          request to file Protected Material under seal is denied by the court, then the Receiving  
13          Party may file the information in the public record unless otherwise instructed by the  
14          court.

15       13. **FINAL DISPOSITION**

16          After the final disposition of this Action, as defined in Section 4, within 60 days  
17          of a written request by the Designating Party, each Receiving Party must return all  
18          Protected Material to the Producing Party or destroy such material. As used in this  
19          subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
20          summaries, and any other format reproducing or capturing any of the Protected  
21          Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
22          must submit a written certification to the Producing Party (and, if not the same person  
23          or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
24          category, where appropriate) all the Protected Material that was returned or destroyed  
25          and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
26          compilations, summaries or any other format reproducing or capturing any of the  
27          Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
28          archival copy of all pleadings, motion papers, trial, deposition, and hearing

1 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
2 reports, attorney work product, and consultant and expert work product, even if such  
3 materials contain Protected Material. Any such archival copies that contain or  
4 constitute Protected Material remain subject to this Protective Order as set forth in  
5 Section 4.

6 14. Any violation of this Order may be punished by any and all appropriate  
7 measures including, without limitation, contempt proceedings and/or monetary  
8 sanctions.

9 This Stipulation and Protective Order may be executed in counterparts.  
10

11 DATED: December 28, 2020

**KNIGHT LAW GROUP, LLP**

12  
13 By: /s/ Daniel Kalinowski  
14 Steve Mikhov  
15 Daniel Kalinowski  
16 Attorneys for Plaintiff  
17 Carlos Cortez

18 DATED: December 22, 2020

**ONGARO PC**

19  
20 By: /s/ Scott S. Shepardson  
21 Scott S. Shepardson  
22 Sharon L. Stewart  
23 Attorneys for Defendant  
24 FCA US LLC  
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26  
27  
28

## ORDER

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. The protective order is entered;
  2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141; and
  3. The party making a request to file documents under seal shall be required to show good cause for documents attached to a nondispositive motion or compelling reasons for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

IT IS SO ORDERED.

Dated: **December 29, 2020**



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**UNITED STATES MAGISTRATE JUDGE**

## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Eastern District of California on \_\_\_\_\_ in the case of *Carlos Cortez v. FCA US LLC*, Case No. 1:20-CV-00597-SAB. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court  
15 for the Eastern District of California for the purpose of enforcing the terms of this  
16 Protective Order, even if such enforcement proceedings occur after termination of this  
17 action. I hereby appoint \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and  
19 telephone number] as my California agent for service of process in connection with  
20 this action or any proceedings related to enforcement of this Protective Order.

21 Date: \_\_\_\_\_

22 | City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

26 | Signature: \_\_\_\_\_